

## DISTRICT OF NEVADA

1 tray with a “small” brownie, which prompted Plaintiff to ask Officer Doss for a different tray.  
2 (Pl.’s Deposition 40:2–12, Ex A. to Def.’s MSJ, ECF No. 56-2). After Officer Doss informed  
3 Plaintiff “no, you have to take what you get,” Plaintiff decided to forego eating lunch and  
4 purportedly set the tray back down on the tray table. (*See id.* 40:18–41:6). In the incident  
5 report, however, Officer Doss asserts that Plaintiff “threw the tray towards the worker and other  
6 inmates in line. . . .” (Incident Report, Ex. A at 42 to Def.’s MSJ, ECF No. 56-3). While  
7 Plaintiff contests that he threw the tray at other inmates, Plaintiff admits that he did not set the  
8 tray down “nicely,” and therefore Officer Doss “could have perceived” that he threw the tray.  
9 (Pl.’s Deposition 44:20–45:15, Ex A. to Def.’s MSJ).

10 Following the incident, Sgt. Burleson and Sgt. Laird transported Plaintiff to the  
11 disciplinary unit, where Plaintiff was charged with disrupting the module and refusing to obey a  
12 direct order of staff. (*See id.* 48:12–25); (*see also* Incident Report, Ex. A at 42 to Def.’s MSJ).  
13 On December 17, 2014, Officers Kegley and Sands conducted the disciplinary hearing against  
14 Plaintiff. (Kegley Decl. ¶ 5, Ex. B to Def.’s MSJ, ECF No. 56-4). At the hearing, Plaintiff  
15 provided the statement: “I did not throw no tray. I just set it on the table.” (*Id.* ¶ 6). To support  
16 this assertion, Plaintiff allegedly requested the video tape of the incident, but the officers  
17 declined to produce the video. (Pl.’s Deposition 54:23–55:3, Ex. A-2. to Def.’s MSJ, ECF No.  
18 56-3). According to Officer Kegley, CCDC surveillance videos were not accessible to hearing  
19 officers at conduct adjustment hearings. (Kegley Decl. ¶ 13, Ex. B to Def.’s MSJ). Ultimately,  
20 the hearing officers found Plaintiff guilty of the charges and issued Plaintiff fifteen days in the  
21 disciplinary unit. (*Id.* ¶¶ 14–16).

22 On April 6, 2015, Plaintiff initiated the instant action, asserting three claims under 42  
23 USC § 1983 against LVMPD and Officer Doss: (1) illegal arrest; (2) false imprisonment; and  
24 (3) health hazard negligence. (Compl., ECF No. 1-1). On September 28, 2015, the Court issued  
25 a screening order, which re-interpreted Plaintiff’s claims as: (1) a Fourteenth Amendment due

1 process violation; and (2) an Eighth Amendment violation for deliberate indifference to  
2 conditions of confinement. (*See* Screening Order 4:10–15, ECF No. 9). In the screening order,  
3 the Court dismissed all claims against LVMPD without prejudice and permitted the Fourteenth  
4 Amendment claim to proceed against Officer Doss. (*Id.* 9:2–11). The Court granted Plaintiff  
5 leave to amend on his claims against LVMPD, but Plaintiff declined to amend the Complaint.  
6 (*See* Notice, ECF No. 11). Accordingly, the only remaining claim at issue before the Court is  
7 Plaintiff’s Fourteenth Amendment due process claim against Officer Doss. (*See* Order, ECF  
8 No. 13).

## 9 **II. LEGAL STANDARD**

10 The Federal Rules of Civil Procedure provide for summary adjudication when the  
11 pleadings, depositions, answers to interrogatories, and admissions on file, together with the  
12 affidavits, if any, show that “there is no genuine dispute as to any material fact and the movant  
13 is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). Material facts are those that  
14 may affect the outcome of the case. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248  
15 (1986). A dispute as to a material fact is genuine if there is sufficient evidence for a reasonable  
16 jury to return a verdict for the nonmoving party. *See id.* “Summary judgment is inappropriate if  
17 reasonable jurors, drawing all inferences in favor of the nonmoving party, could return a verdict  
18 in the nonmoving party’s favor.” *Diaz v. Eagle Produce Ltd. P’ship*, 521 F.3d 1201, 1207 (9th  
19 Cir. 2008) (citing *United States v. Shumway*, 199 F.3d 1093, 1103–04 (9th Cir. 1999)). A  
20 principal purpose of summary judgment is “to isolate and dispose of factually unsupported  
21 claims.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 323–24 (1986).

22 In determining summary judgment, a court applies a burden-shifting analysis. “When  
23 the party moving for summary judgment would bear the burden of proof at trial, it must come  
24 forward with evidence which would entitle it to a directed verdict if the evidence went  
25 uncontroverted at trial. In such a case, the moving party has the initial burden of establishing

1 the absence of a genuine issue of fact on each issue material to its case.” *C.A.R. Transp.*  
2 *Brokerage Co. v. Darden Rests., Inc.*, 213 F.3d 474, 480 (9th Cir. 2000) (citations omitted). In  
3 contrast, when the nonmoving party bears the burden of proving the claim or defense, the  
4 moving party can meet its burden in two ways: (1) by presenting evidence to negate an  
5 essential element of the nonmoving party’s case; or (2) by demonstrating that the nonmoving  
6 party failed to make a showing sufficient to establish an element essential to that party’s case  
7 on which that party will bear the burden of proof at trial. *See Celotex Corp.*, 477 U.S. at 323–  
8 24. If the moving party fails to meet its initial burden, summary judgment must be denied and  
9 the court need not consider the nonmoving party’s evidence. *See Adickes v. S.H. Kress & Co.*,  
10 398 U.S. 144, 159–60 (1970).

11 If the moving party satisfies its initial burden, the burden then shifts to the opposing  
12 party to establish that a genuine issue of material fact exists. *See Matsushita Elec. Indus. Co. v.*  
13 *Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). To establish the existence of a factual dispute,  
14 the opposing party need not establish a material issue of fact conclusively in its favor. It is  
15 sufficient that “the claimed factual dispute be shown to require a jury or judge to resolve the  
16 parties’ differing versions of the truth at trial.” *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors*  
17 *Ass’n*, 809 F.2d 626, 631 (9th Cir. 1987). In other words, the nonmoving party cannot avoid  
18 summary judgment by relying solely on conclusory allegations that are unsupported by factual  
19 data. *See Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989). Instead, the opposition must go  
20 beyond the assertions and allegations of the pleadings and set forth specific facts by producing  
21 competent evidence that shows a genuine issue for trial. *See Celotex Corp.*, 477 U.S. at 324.  
22 At summary judgment, a court’s function is not to weigh the evidence and determine the truth  
23 but to determine whether there is a genuine issue for trial. *See Anderson*, 477 U.S. at 249. The  
24 evidence of the nonmovant is “to be believed, and all justifiable inferences are to be drawn in  
25

1 his favor.” *Id.* at 255. But if the evidence of the nonmoving party is merely colorable or is not  
2 significantly probative, summary judgment may be granted. *See id.* at 249–50.

### 3 **III. DISCUSSION**

4 Plaintiff alleges that Defendant violated his due process rights by: (1) refusing to let him  
5 call witnesses and review the video of the incident during the disciplinary hearing; and (2)  
6 confining him to a holding cell for 47 out of 48 hours as part of his discipline. (*See* Compl. at  
7 3–6). The procedural guarantees of the Fourteenth Amendment's Due Process Clause apply  
8 only when a constitutionally protected liberty or property interest is at stake. *See Ingraham v.*  
9 *Wright*, 430 U.S. 651, 672–73 (1977); *Bd. of Regents v. Roth*, 408 U.S. 564, 569 (1972). In  
10 order to be held individually liable for a due process deprivation under 42 USC § 1983, a  
11 person acting under color of law must have personally participated in the deprivation. *Taylor v.*  
12 *List*, 880 F.2d 1040, 1045 (9th Cir. 1989). That is, the official must have caused the  
13 constitutional injury. *See Kentucky v. Graham*, 473 U.S. 159, 165 (1985). The Ninth Circuit  
14 has held that “[a] person ‘subjects’ another to the deprivation of a constitutional right, within  
15 the meaning of section 1983, if he does an affirmative act, participates in another's affirmative  
16 acts or omits to perform an act which he is legally required to do that causes the deprivation of  
17 which complaint is made.” *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir.1978).

18 Defendant argues that summary judgment on Plaintiff’s due process claim is appropriate  
19 because Plaintiff has failed to establish individual liability against Defendant. (Def.’s MSJ  
20 8:26–9:3, ECF No. 56). The Court agrees. Here, Plaintiff has provided no evidence to  
21 demonstrate that Defendant was personally involved in any of the alleged due process  
22 violations. To the contrary, by Plaintiff’s own admission, Defendant had no involvement in the  
23 at-issue disciplinary hearing, and therefore any decisions regarding the presentation of  
24 witnesses or video evidence cannot be attributed to Defendant. (*See* Pl.’s Deposition 46:3–7, Ex  
25 A. to Def.’s MSJ). With respect to conditions of confinement following the disciplinary ruling,

1 Plaintiff has likewise provided no evidence to implicate Defendant's involvement. In fact,  
2 based on the record, Defendant's only involvement in this case is limited to her initial written  
3 report of the incident in the lunch room. (*Id.*). Accordingly, Defendant is entitled to summary  
4 judgment on Plaintiff's remaining Fourteenth Amendment due process claim. *See Taylor*, 880  
5 F.2d at 1045.

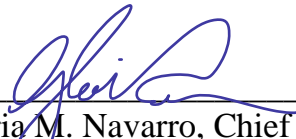
6 **IV. CONCLUSION**

7 **IT IS HEREBY ORDERED** that Plaintiff's Motion for Summary Judgment, (ECF No.  
8 52), is **DENIED**.

9 **IT IS FURTHER ORDERED** that Defendant's Counter Motion for Summary  
10 Judgement, (ECF No. 56), is **GRANTED**.

11 The Clerk of the Court shall enter judgment accordingly and close the case.

12  
13 **DATED** this 19 day of March, 2018.

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17 Gloria M. Navarro, Chief Judge  
18 United States District Judge  
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